



# Oregon

Tina Kotek, Governor

Department of Environmental Quality  
Office of Compliance and Enforcement  
700 NE Multnomah Street, Suite 600  
Portland, OR 97232-4100  
(503) 229-5696  
FAX (503) 229-5100  
TTY 711

December 7, 2023

CERTIFIED MAIL: 7014 2120 0001 8302 9750

DS Albany LLC  
c/o Daljit Singh, Registered Agent  
3135 Santiam Highway SE  
Albany, OR 97322

Re: Notice of Civil Penalty Assessment and Order  
Case No. LQ/UST-WR-2023-073

This letter is to inform you that DEQ has issued you a total civil penalty of \$12,274.50 for underground storage tank (UST) violations at your facility in Albany. DEQ documented numerous violations during its inspection on March 21, 2023. DEQ has cited you for failing to report and investigate a suspected release of fuel, failing to provide a method of release detection that can detect a release from any portion of the UST and the underground piping that routinely contains a regulated substance, and failing to properly maintain spill prevention equipment. DEQ has also cited you for the following monitoring and testing violations: failing to initially test spill prevention and overfill prevention equipment prior to October 1, 2020, failing to conduct annual line tightness and leak detector testing, failing to test the electronic and mechanical components of the release detection system, and failing to conduct monthly and annual walkthrough inspections of the spill prevention equipment and release detection equipment. Additionally, you failed to provide documentation of financial responsibility and operator training records.

DEQ issued this penalty because the facility is out of compliance with many important UST regulations. Proper operation, maintenance and testing of the equipment at the facility is essential to prevent and detect releases of fuel into the environment. Although there was a suspected release of fuel at the facility, you failed to take action by reporting it to DEQ or investigating the release. These actions are necessary to ensure quick and appropriate response to a release before contamination spreads beyond the immediate area of the USTs. Leaking fuel tanks can have lasting harmful effects on the environment and human health.

Included in Section IV of the enclosed Notice is an order requiring you to bring the facility into compliance with UST regulations by taking the following actions: remove all liquid and debris from spill buckets and sumps and properly dispose of it; conduct hydrostatic testing of the sumps and submit the results to DEQ; take any other actions needed to investigate the suspected release conditions and submit a report to DEQ; ensure that all sensors are properly installed; and ensure that all employees who are designated as Class C operators receive the required training. You are required to submit documentation demonstrating your compliance to DEQ within thirty (30) days of this Notice becoming final.

If you wish to appeal this matter, DEQ must receive a request for a hearing within 20 calendar days from your receipt of this letter. The hearing request must be in writing. Send your request to DEQ Office of Compliance and Enforcement:

Via mail – 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232

Via email – [DEQappeals@deq.oregon.gov](mailto:DEQappeals@deq.oregon.gov)

Via fax – 503-229-5100

Once DEQ receives your request, we will arrange to meet with you to discuss this matter. If DEQ does not receive a timely written hearing request, the penalty will become due. Alternatively, you can pay the penalty by sending a check or money order to the above address.

The attached Notice further details DEQ's reasons for issuing the penalty and provides further instructions for appealing the penalty. Please review and refer to it when discussing this case with DEQ.

DEQ may allow you to resolve part of your penalty through the completion of a Supplemental Environmental Project (SEP). SEPs are environmental improvement projects that you sponsor instead of paying a penalty. Further information is available by calling the number below or at <http://www.oregon.gov/deq/Regulations/Pages/SEP.aspx>.

DEQ's rules are available at <http://www.oregon.gov/deq/Regulations/Pages/Statutes.aspx> or by calling the number below.

If you have any questions, please contact Esther Westbrook at 503-229-5374 or toll free in Oregon at 800-452-4011, extension 5374.

Sincerely,



Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

Enclosures

cc: Dylan Eckert, Eugene Office, DEQ  
Mark Drouin, Northwest Region, DEQ

BEFORE THE ENVIRONMENTAL QUALITY COMMISSION  
OF THE STATE OF OREGON

IN THE MATTER OF:	)	
DS ALBANY, LLC,	)	NOTICE OF CIVIL PENALTY
an Oregon limited liability company,	)	ASSESSMENT AND ORDER
	)	
Respondent.	)	CASE NO. LQ/UST-WR-2023-073

I. AUTHORITY

The Department of Environmental Quality (DEQ) issues this Notice of Civil Penalty Assessment and Order (Notice) pursuant to Oregon Revised Statutes (ORS) 468.100, ORS 468.126 through 468.140, ORS 466.706 through 466.882, ORS 466.994, ORS Chapter 183 and Oregon Administrative Rules (OAR) Chapter 340, Divisions 011, 012, and 150.

II. FINDINGS OF FACT

1. At all materials times, Respondent was the permittee of an underground storage tank (UST) system at Albany Food Mart, which is located at 3135 Santiam Highway SE in Albany, Linn County, Oregon (the Facility). Respondent operates the UST system under Certificate to Operate #7068.

2. The UST system consists of four USTs and connected piping. The UST system has a total capacity of approximately 30,000 gallons of gasoline and diesel fuel, which are regulated substances.

3. On March 21, 2023, DEQ conducted an inspection of the UST system and reviewed Respondent's records for the UST system.

4. On March 21, 2023, the spill buckets at the Facility were in the following condition:

- a. The spill bucket for Tank 4A (unleaded regular gasoline) had approximately two gallons of fuel accumulated in it;
- b. The spill bucket for Tank 1A (gasoline) had approximately one gallon of fuel accumulated in it that had been released from vapor recovery equipment; and
- c. The spill bucket for the diesel tanks(s) had approximately three gallons of fuel accumulated in it.

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1 5. On March 21, 2023, the sumps at the Facility were in the following condition:

2 a. The under-dispenser containment (UDC) sump for “dispenser 9/10” serving diesel and  
3 gasoline tanks had approximately ten gallons of diesel fuel accumulated in it; and

4 b. The transition sump had approximately one gallon of fuel and debris accumulated in it.

5 6. On March 21, 2023, and as of the date of this Notice, Respondent had not reported the  
6 suspected release conditions described in Paragraphs 4 and 5 above to DEQ.

7 7. On March 21, 2023, and as of the date of this Notice, Respondent had not made efforts to  
8 investigate or confirm the suspected release.

9 8. On March 21, 2023, the sensor in the UDC described in Paragraph 5 above was placed  
10 several inches above the liquid level rather than at the lowest point in the UDC. The placement of the  
11 sensor prevented it from stopping the operation of the dispenser due to the presence of fuel in the UDC.

12 9. As of March 21, 2023, Respondent had not tested the overfill and spill prevention  
13 equipment at the Facility, including spill buckets and containment sumps used for interstitial  
14 monitoring of piping.

15 10. On or about April 27, 2023, Respondent tested the spill buckets and overfill prevention  
16 equipment at the Facility, but not the containment sumps.

17 11. The Facility uses interstitial monitoring and line tightness testing as its primary release  
18 detection methods.

19 12. As of March 21, 2023, Respondent had not performed line tightness testing within one (1)  
20 year of the previous test, which was performed in February 2019.

21 13. As of March 21, 2023, Respondent had not performed testing of the line leak detectors  
22 within one (1) year of the previous test, which was performed in February 2019.

23 14. On or about April 27, 2023, Respondent performed line tightness and line leak detector  
24 testing.

25 15. As of March 21, 2023, Respondent had not tested the electronic and mechanical components  
26 of the release detection system, including the tank monitor and sensors, since October 1, 2020.

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1 16. On or about April 27, 2023, Respondent tested the electronic and mechanical components of  
2 the release detection system, including the tank monitor and sensors.

3 17. As of March 21, 2023, Respondent had not performed monthly walkthrough inspections of  
4 the spill prevention equipment and release detection equipment during the previous year, and Respondent  
5 did not have records of such inspections.

6 18. As of March 21, 2023, Respondent had not performed an annual operation and maintenance  
7 walkthrough inspection during the previous year, and Respondent did not have records of such an  
8 inspection.

9 19. On March 21, 2023, Respondent did not provide documentation of compliance with  
10 financial responsibility requirements for the UST system upon request.

11 20. On March 21, 2023, Respondent did not provide training records for the Class C operators  
12 at the Facility upon request.

### 13 III. CONCLUSIONS

14 1. Respondent has violated OAR 340-150-0310(1) by failing to maintain spill prevention  
15 equipment by allowing debris and fuel to accumulate in two spill buckets so that it would not prevent the  
16 release of fuel to the environment when the transfer hose is detached from the fill pipe and failing to  
17 replace or repair one spill bucket that was not liquid tight, as alleged in Section II, Paragraph 4  
18 above. This is a Class I violation according to OAR 340-012-0067(1)(d). DEQ hereby assesses a \$1,283  
19 civil penalty for this violation.

20 2. Respondent has violated OAR 340-150-0500(1) by failing to report a suspected release of  
21 fuel to DEQ within 24 hours, as alleged in Section II, Paragraphs 4 – 6 above. This is a Class II  
22 violation according to OAR 340-012-0074(2)(a). DEQ hereby assesses a \$725 civil penalty for this  
23 violation.

24 3. Respondent has violated OAR 340-150-0510(1) by failing to immediately initiate  
25 investigation and confirmation of a suspected release of fuel, as alleged in Section II, Paragraphs 4, 5,  
26 and 7 above. This is a Class I violation according to OAR 340-012-0067(1)(a). DEQ hereby assesses a  
27 \$1,450 civil penalty for this violation.

1           4. Respondent has violated OAR 340-150-0400(1)(a) by failing to provide a method of release  
2 detection that can detect a release from any portion of the UST and the underground piping that routinely  
3 contains a regulated substance, as alleged in Section II, Paragraph 8 above. This is a Class I violation  
4 according to OAR 340-012-0067(1)(e). DEQ hereby assesses a \$1,250 civil penalty for this violation.

5           5. Respondent has violated OAR 340-150-0310(10) by failing to initially test its spill  
6 prevention and overfill prevention equipment prior to October 1, 2020, as alleged in Section II,  
7 Paragraphs 9 and 10 above. This is a Class I violation according to OAR 340-012-0067(1)(j). DEQ  
8 hereby assesses a \$1,522 civil penalty for this violation.

9           6. Respondent has violated OAR 340-150-0410(3) by failing to conduct line tightness testing  
10 annually, as alleged in Section II, Paragraphs 11, 12, and 14 above. Since Respondent did not conduct  
11 testing between February 2019 and April 27, 2023, it missed three annual tests. This is a Class I violation  
12 according to OAR 340-012-0067(1)(j). DEQ hereby assesses a \$1,973 civil penalty for this violation.

13           7. Respondent has violated OAR 340-150-0410(2)(c) by failing to conduct operational line leak  
14 detector testing annually, as alleged in Section II, Paragraphs 11, 13, and 14, above. Since Respondent did  
15 not conduct testing between February 2019 and April 27, 2023, it missed three annual tests. This is a  
16 Class I violation according to OAR 340-012-0067(1)(j). DEQ hereby assesses a \$900 civil penalty for this  
17 violation.

18           8. Respondent has violated OAR 340-150-0400(2) by failing to test the electronic and  
19 mechanical components of the release detection system on an annual basis beginning on October 1,  
20 2020, as alleged in Section II, Paragraphs 15 and 16 above. This is a Class I violation according to OAR  
21 340-012-0067(1)(j). DEQ hereby assesses a \$1,184 civil penalty for this violation.

22           9. Respondent has violated OAR 340-150-0315(1)(a)(A) by failing to conduct walkthrough  
23 inspections of the spill prevention equipment and release detection equipment every thirty (30) days, as  
24 alleged in Section II above, Paragraph 17 above. This is a Class II violation according to OAR 340-012-  
25 0053(2). DEQ hereby assesses a \$600 civil penalty for this violation.

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1 10. Respondent has violated OAR 340-150-0315(1)(a)(B) by failing to conduct an annual  
2 operation and maintenance walkthrough inspection, as alleged in Section II, Paragraph 18 above. This is  
3 a Class II violation according to OAR 340-012-0053(2). DEQ hereby assesses a \$525 civil penalty for this  
4 violation.

5 11. Respondent has violated OAR 340-150-0163(1)(k) by failing to provide information to DEQ  
6 about the UST system's compliance with financial responsibility requirements, as alleged in Section II,  
7 Paragraph 19 above. This is a Class II violation according to OAR 340-012-0053(2). DEQ hereby  
8 assesses a \$237.50 civil penalty for this violation.

9 12. Respondent has violated OAR 340-150-0210(10)(b) by failing to provide training records for  
10 each Class C operator at the Facility to DEQ upon request, as alleged in Section II, Paragraph 20 above.  
11 This is a Class II violation according to OAR 340-012-0053(2). DEQ hereby assesses a \$625 civil penalty  
12 for this violation.

#### 13 IV. ORDER TO PAY CIVIL PENALTY AND TO COMPLY

14 Based upon the foregoing FINDINGS OF FACTS AND CONCLUSIONS, Respondent is  
15 hereby ORDERED TO:

16 1. Pay a total civil penalty of \$12,274.50. The determination of the civil penalties is attached  
17 as Exhibits 1 – 12, which are incorporated as part of this Notice.

18 If you do not file a request for hearing as set forth in Section V below, your check or money  
19 order must be made payable to "**Department of Environmental Quality**" and sent to: **DEQ - Business**  
20 **Office, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232.**

21 2. Comply with Oregon law by taking the following actions within thirty (30) days of this  
22 Notice becoming final by operation of law or on appeal. Submit documentation to UST Inspector Dylan  
23 Eckert at [Dylan.Eckert@deq.oregon.gov](mailto:Dylan.Eckert@deq.oregon.gov).

- 24 a. Remove all liquid and debris from spill buckets and sumps and properly dispose of it;
- 25 b. Conduct hydrostatic testing of the sumps and submit the results to DEQ;
- 26 c. Take any other actions needed to investigate the suspected release conditions and submit  
27 a report to DEQ;

- d. Ensure that all sensors are properly installed;
- e. Ensure that all employees who are designated as Class C operators receive the required training.

#### V. NOTICE OF RIGHT TO REQUEST A CONTESTED CASE HEARING

You have a right to a contested case hearing on this Notice, if you request one in writing. DEQ must receive your request for hearing **within 20 calendar days** from the date you receive this Notice. If you have any affirmative defenses or wish to dispute any allegations of fact in this Notice or attached exhibits, you must do so in your request for hearing, as factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. (See OAR 340-011-0530 for further information about requests for hearing.) You must send your request to: **DEQ, Office of Compliance and Enforcement, 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232**, fax it to **503-229-6762** or email it to **DEQappeals@deq.oregon.gov**. An administrative law judge employed by the Office of Administrative Hearings will conduct the hearing, according to ORS Chapter 183, OAR Chapter 340, Division 011, and OAR 137-003-0501 to 0700. You have a right to be represented by an attorney at the hearing, however you are not required to be. If you are an individual, you may represent yourself. If you are a corporation, partnership, limited liability company, unincorporated association, trust, or government body, you must be represented by an attorney or a duly authorized representative, as set forth in OAR 137-003-0555.

Active-duty Service members have a right to stay proceedings under the federal Service Members Civil Relief Act. For more information contact the Oregon State Bar at 1-800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll-free telephone number.

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1 If you fail to file a timely request for hearing, the Notice will become a final order by default  
2 without further action by DEQ, as per OAR 340-011-0535(1). If you do request a hearing but later  
3 withdraw your request, fail to attend the hearing, or notify DEQ that you will not be attending the  
4 hearing, DEQ will issue a final order by default pursuant to OAR 340-011-0535(3). DEQ designates  
5 the relevant portions of its files, including information submitted by you, as the record for purposes of  
6 proving a prima facie case.

7  
8  
9 12 / 7 / 2023  
10 Date

  
Kieran O'Donnell, Manager  
Office of Compliance and Enforcement

## EXHIBIT 1

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION 1: Failing to properly operate and maintain spill prevention equipment, specifically two spill buckets, in violation of OAR 340-150-0310(1).
- CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(d).
- MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 5 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had three Class I violations and one Class II violation in Case No. 2019-FC-4351 and one Class I violation in Case No. LQ/UST-WR-2019-182.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is insufficient information to make a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(a)(D), because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. The violation has been ongoing since DEQ's inspection on March 21, 2023, which is a duration of more than seven months.
- "M" is the mental state of Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to properly maintain the spill buckets, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate spill prevention requirements.

- "C" is Respondent's efforts to correct the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, Respondent has not submitted documentation to DEQ showing that it has performed maintenance on the spill buckets.
- "EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$33. This is the amount Respondent gained by avoiding spending \$50 to pump fuel out of the spill buckets and sumps. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (5 + 0 + 4 + 4 + 2)] + \$33 \\ &= \$500 + (\$50 \times 15) + \$33 \\ &= \$500 + \$750 + \$33 \\ &= \$1,283 \end{aligned}$$

## EXHIBIT 2

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 2: Failing to report a suspected release to DEQ within 24 hours, in violation OAR 340-150-0500(1).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0074(2)(a).

MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$250 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 5 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had three Class I violations and one Class II violation in Case No. 2019-FC-4351 and one Class I violation in Case No. LQ/UST-WR-2019-182.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is insufficient information to make a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. DEQ observed the suspected release on March 21, 2023, and Respondent had taken no action to report the suspected release as of the date of this Notice, which is a duration of more than seven months.

"M" is the mental state of Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. As permitted UST facility, Respondent is aware of the requirement to report suspected releases of petroleum products. DEQ notified Respondent of the reporting requirement during its inspection on November 16, 2021, but Respondent has still not reported the release. By failing to report a suspected release to DEQ, Respondent consciously disregarded a substantial and unjustifiable risk that it would violate spill prevention requirements. Because of the potential impacts of petroleum

releases on human health and the environment, disregarding this risk constituted a gross deviation from the standard of care a reasonable permittee would observe in that situation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). Respondent did not report the suspected release to DEQ; it was discovered during an inspection.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ finds that Respondent has not gained any economic benefit from the violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$250 + [(0.1 x \$250) x (5 + 0 + 4 + 8 + 2)] + \$0  
= \$250 + (\$25 x 19) + \$0  
= \$250 + \$475 + \$0  
= \$725

### EXHIBIT 3

#### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 3: Failing to immediately initiate investigation and confirmation of a suspected release, in violation OAR 340-150-0510(1).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(a).

MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 5 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had three Class I violations and one Class II violation in Case No. 2019-FC-4351 and one Class I violation in Case No. LQ/UST-WR-2019-182.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is insufficient information to make a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(d) because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. DEQ observed the suspected release on March 21, 2023, and Respondent had taken no action to investigate the suspected release as of the date of this Notice, which is a duration of more than seven months.

"M" is the mental state of Respondent and receives a value of 8 according to OAR 340-012-0145(5)(d) because Respondent's conduct was reckless. As permitted UST facility, Respondent is aware of the requirement to investigate and clean up releases of petroleum products. During its inspection on March 21, 2023, DEQ documented the suspected release conditions and notified Respondent of the requirement to investigate. However, Respondent has not investigated the release as of the date of this Notice. By failing to investigate a petroleum release at its facility, Respondent consciously disregarded a substantial and unjustifiable risk that a release had occurred. Because of the potential impacts of petroleum

releases on human health and the environment, disregarding this risk constituted a gross deviation from the standard of care a reasonable permittee would observe in that situation.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, Respondent has not investigated the suspected release.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because the cost of hydrostatic testing needed to investigate the release is included in other exhibits.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$500 + [(0.1 x \$500) x (5 + 0 + 4 + 8 + 2)] + \$0  
= \$500 + (\$50 x 19) + \$0  
= \$500 + \$950 + \$0  
= \$1,450

## EXHIBIT 4

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 4: Failing to provide a method of release detection that can detect a release from any portion of the UST and the underground piping that routinely contains a regulated substance, in violation of OAR 340-150-0400(1)(a).

CLASSIFICATION: This is a Class I violation pursuant to OAR 340-012-0067(1)(e).

MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 5 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had three Class I violations and one Class II violation in Case No. 2019-FC-4351 and one Class I violation in Case No. LQ/UST-WR-2019-182.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is insufficient information to make a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing and receives a value of 4 according to OAR 340-012-0145(4)(a)(D), because there were more than 28 occurrences of the violation. Each day of violation is a separate occurrence. The violation has been ongoing since at least March 21, 2023, when DEQ documented the violation, which is a duration of more than seven months.

"M" is the mental state of Respondent and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to ensure that release detection equipment was properly installed and functional before DEQ's inspection in March 2023 or after being notified of its noncompliance, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.



"C" is Respondent's efforts to correct the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph (6)(f). As of the date of this Notice, Respondent has not submitted documentation to DEQ showing that it has moved the sensor to the lowest part of the under-dispenser containment (UDC).

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 according to OAR 340-012-0150(3) because there is insufficient information to make an estimate of Respondent's economic benefit, if any.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
= \$500 + [(0.1 x \$500) x (5 + 0 + 4 + 4 + 2)] + \$0  
= \$500 + (\$50 x 15) + \$0  
= \$500 + \$750 + \$0  
= \$1,250

## EXHIBIT 5

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION NO. 5                      Failing to initially test spill prevention and overfill prevention equipment, including containment sumps used for interstitial monitoring, by October 1, 2020, in violation of OAR 340-150-0310(10).
- CLASSIFICATION:                      This is a Class I violation pursuant to OAR 340-012-0067(1)(j).
- MAGNITUDE:                      The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA:                      The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 5 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had three Class I violations and one Class II violation in Case No. 2019-FC-4351 and one Class I violation in Case No. LQ/UST-WR-2019-182.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is insufficient information to make a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. Respondent failed to conduct testing by a specific date, October 1, 2020.
- "M" is the mental state of the Respondent and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. In 2018, DEQ adopted the regulation requiring that the testing be completed prior to October 1, 2020, and provided extensive outreach to the regulated community on the requirement to conduct the testing prior to that date. Respondent reasonably should have known of the requirement to conduct the testing prior to October 1, 2020.

"C" is Respondent's efforts to correct or mitigate the violation and receives a value of -2 according to OAR 340-012-0145(6)(d) because Respondent eventually made some efforts to correct the violation. Respondent tested the spill buckets and overfill prevention equipment on April 27, 2023, but it has not tested the containment sumps as of the date of this Notice.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$772. This is the amount Respondent gained by avoiding spending \$1,350 to conduct spill prevention equipment testing. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
=  $\$500 + [(0.1 \times \$500) \times (5 + 0 + 0 + 2 + 2)] + \$772$   
=  $\$500 + (\$50 \times 5) + \$772$   
=  $\$500 + \$250 + \$772$   
=  $\$1,522$

## EXHIBIT 6

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION NO. 6                      Failing to conduct annual line tightness testing, in violation of OAR 340-150-0410(3).

CLASSIFICATION:                      This is a Class I violation pursuant to OAR 340-012-0067(1)(j).

MAGNITUDE:                      The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA:                      The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 5 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had three Class I violations and one Class II violation in Case No. 2019-FC-4351 and one Class I violation in Case No. LQ/UST-WR-2019-182.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is insufficient information to make a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. Respondent failed to conduct annual testing on three occasions between 2019 and the date it completed the testing, April 27, 2023.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to conduct line tightness testing for three years, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation. Respondent completed the line tightness testing on April 27, 2023.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$1,073. This is the amount Respondent gained by avoiding spending \$500 per year to conduct annual line tightness and leak detector testing for three years. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
=  $\$500 + [(0.1 \times \$500) \times (5 + 0 + 2 + 4 - 3)] + \$1,073$   
=  $\$500 + (\$50 \times 8) + \$1,073$   
=  $\$500 + \$400 + \$1,073$   
=  $\$1,973$

## EXHIBIT 7

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION NO. 7                      Failing to conduct annual operational line leak detector testing, in violation of OAR 340-150-0410(2)(c).

CLASSIFICATION:                      This is a Class I violation pursuant to OAR 340-012-0067(1)(j).

MAGNITUDE:                      The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA:                      The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 5 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had three Class I violations and one Class II violation in Case No. 2019-FC-4351 and one Class I violation in Case No. LQ/UST-WR-2019-182.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is insufficient information to make a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. Respondent failed to conduct annual testing on three occasions between 2019 and the date it completed the testing, April 27, 2023.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to conduct line leak detector testing for three years, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent made reasonable efforts to correct the violation. Respondent completed the line leak detector testing on April 27, 2023.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 as the costs avoided as a result of this violation are included in Exhibit No. 6.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$500 + [(0.1 \times \$500) \times (5 + 0 + 2 + 4 - 3)] + \$0 \\ &= \$500 + (\$50 \times 8) + \$0 \\ &= \$500 + \$400 + \$0 \\ &= \$900 \end{aligned}$$

## EXHIBIT 8

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION NO. 8                      Failing to test the electronic and mechanical components of the release detection system on an annual basis, in violation of OAR 340-150-0400(2).
- CLASSIFICATION:                      This is a Class I violation pursuant to OAR 340-012-0067(1)(j).
- MAGNITUDE:                              The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA:                      The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP"    is the base penalty, which is \$500 for a Class I, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(A)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the owner or permittee of one UST facility.
- "P"       is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 5 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had three Class I violations and one Class II violation in Case No. 2019-FC-4351 and one Class I violation in Case No. LQ/UST-WR-2019-182.
- "H"       is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is insufficient information to make a finding under paragraphs (3)(a) or (b).
- "O"       is whether the violation was repeated or ongoing, and receives a value of 2 according to OAR 340-012-0145(4)(b) because there were more than one but less than seven occurrences of the violation. Respondent failed to conduct annual testing for three years: 2020, 2021, and 2022.
- "M"       is the mental state of the Respondent, and receives a value of 2 according to OAR 340-012-0145(5)(b) because Respondent had constructive knowledge (reasonably should have known) of the requirement. In 2018, DEQ adopted the regulation requiring that the testing be completed prior to October 1, 2020, and had provided extensive outreach to the regulated community on the requirement to conduct the testing prior to that date. Respondent reasonably should have known of the requirement to conduct the testing by October 1, 2020, and annually thereafter.



"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of -3 according to OAR 340-012-0145(6)(c) because Respondent took reasonable affirmative efforts to minimize the effects of the violation. Respondent completed the testing on April 27, 2023.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$384. This is the amount Respondent gained by avoiding spending \$225 per year to conduct annual testing for three years. This "EB" was calculated pursuant to OAR 340-012-0150(1) using the U.S. Environmental Protection Agency's BEN computer model.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
=  $\$500 + [(0.1 \times \$500) \times (5 + 0 + 2 + 2 - 3)] + \$384$   
=  $\$500 + (\$50 \times 6) + \$384$   
=  $\$500 + \$300 + \$384$   
=  $\$1,184$

## EXHIBIT 9

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION 9: Failing to perform monthly walkthrough inspections of the spill prevention equipment and release detection equipment, in violation of OAR 340-150-0315(1)(a).
- CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).
- MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$250 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the permittee of one UST facility.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 5 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had three Class I violations and one Class II violation in Case No. 2019-FC-4351 and one Class I violation in Case No. LQ/UST-WR-2019-182.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is insufficient information to make a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing, and receives a value of 3 according to OAR 340-012-0145(4)(c) because there were from seven to 28 occurrences of the violation. Respondent is required to conduct walkthrough inspections on a monthly basis. Respondent did not conduct walkthrough inspections for at least twelve months.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to conduct walkthrough inspections for at least twelve months, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.
- "C" is Respondent's efforts to correct the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph

(6)(f). As of the date of this Notice, Respondent has not submitted documentation to DEQ showing that it has begun conducting monthly walkthrough inspections.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ finds that the economic benefit Respondent gained by failing to conduct walkthrough inspections was de minimis.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
=  $\$250 + [(0.1 \times \$250) \times (5 + 0 + 3 + 4 + 2)] + \$0$   
=  $\$250 + (\$25 \times 14) + \$0$   
=  $\$250 + \$350 + \$0$   
=  $\$600$

## EXHIBIT 10

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

- VIOLATION 10:** Failing to perform an annual operation and maintenance walkthrough inspection, in violation of OAR 340-150-0315(1)(a)(B).
- CLASSIFICATION:** This is a Class II violation pursuant to OAR 340-012-0053(2).
- MAGNITUDE:** The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.
- CIVIL PENALTY FORMULA:** The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$
- "BP" is the base penalty, which is \$250 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the permittee of one UST facility.
- "P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 5 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had three Class I violations and one Class II violation in Case No. 2019-FC-4351 and one Class I violation in Case No. LQ/UST-WR-2019-182.
- "H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is insufficient information to make a finding under paragraphs (3)(a) or (b).
- "O" is whether the violation was repeated or ongoing and receives a value of 0 according to OAR 340-012-0145(4)(a) because there was at least one occurrence of the violation. Respondent failed to conduct an annual operation and maintenance walkthrough inspection in 2022.
- "M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to conduct an annual walkthrough inspection, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.
- "C" is Respondent's efforts to correct the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph

(6)(f). As of the date of this Notice, Respondent has not submitted documentation to DEQ showing that it has begun conducting annual walkthrough inspections.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ finds that the economic benefit Respondent gained by failing to conduct an annual walkthrough inspection was de minimis.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$   
=  $\$250 + [(0.1 \times \$250) \times (5 + 0 + 0 + 4 + 2)] + \$0$   
=  $\$250 + (\$25 \times 11) + \$0$   
=  $\$250 + \$275 + \$0$   
=  $\$525$

## EXHIBIT 11

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 11: Failing to provide information to DEQ about the UST system's compliance with financial responsibility requirements, in violation of OAR 340-150-0163(1)(k).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

MAGNITUDE: The magnitude of the violation is minor pursuant to OAR 340-012-0130(4) as there is no selected magnitude specified in OAR 340-012-0135 applicable to this violation and DEQ finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health and the environment. Failing to provide financial responsibility documentation to DEQ did not have the potential to result in impacts to the environment or human health, considering that the facility was in compliance with the substantive requirements.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$125 for a Class II, minor magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(iii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the permittee of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 5 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had three Class I violations and one Class II violation in Case No. 2019-FC-4351 and one Class I violation in Case No. LQ/UST-WR-2019-182.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is insufficient information to make a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 0 according to OAR 340-012-0145(4)(a) because there was only one occurrence of the violation. The violation occurred during the inspection on March 21, 2023.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to conduct ensure that financial responsibility documentation was kept on site, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct or mitigate the violation, and receives a value of 0 according to OAR 340-012-0145(6)(f) because the violation or the effects of the violation could not be corrected or minimized.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ finds that Respondent has not gained any economic benefit from the violation.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$125 + [(0.1 \times \$125) \times (5 + 0 + 0 + 4 + 0)] + \$0 \\ &= \$125 + (\$12.50 \times 9) + \$0 \\ &= \$125 + \$112.50 + \$0 \\ &= \$237.50 \end{aligned}$$

## EXHIBIT 12

### FINDINGS AND DETERMINATION OF RESPONDENT'S CIVIL PENALTY PURSUANT TO OREGON ADMINISTRATIVE RULE (OAR) 340-012-0045

VIOLATION 12: Failing to provide training records for each Class C operator at the Facility to DEQ upon request, in violation of OAR 340-150-0210(10)(b).

CLASSIFICATION: This is a Class II violation pursuant to OAR 340-012-0053(2).

MAGNITUDE: The magnitude of the violation is moderate, pursuant to OAR 340-012-0130(1), as there is no selected magnitude specified in OAR 340-012-0135 for this violation, and the information reasonably available to DEQ does not indicate a minor or major magnitude.

CIVIL PENALTY FORMULA: The formula for determining the amount of penalty of each violation is:  $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$

"BP" is the base penalty, which is \$250 for a Class II, moderate magnitude violation in the matrix listed in OAR 340-012-0140(5)(b)(B)(ii) and applicable pursuant to OAR 340-012-0140(5)(a)(E). Respondent is the permittee of one UST facility.

"P" is whether Respondent has any prior significant actions, as defined in OAR 340-012-0030(19), in the same media as the violation at issue that occurred at a facility owned or operated by the same Respondent, and receives a value of 5 according to OAR 340-012-0145(2)(a)(C) and (D), because Respondent had three Class I violations and one Class II violation in Case No. 2019-FC-4351 and one Class I violation in Case No. LQ/UST-WR-2019-182.

"H" is Respondent's history of correcting prior significant actions and receives a value of 0 according to OAR 340-012-0145(3)(c), because there is insufficient information to make a finding under paragraphs (3)(a) or (b).

"O" is whether the violation was repeated or ongoing, and receives a value of 4 according to OAR 340-012-0145(4)(d) because the violation has been ongoing for more than 28 days. DEQ documented the violation on March 21, 2023, and it has not been corrected as of the date of this Notice.

"M" is the mental state of the Respondent, and receives a value of 4 according to OAR 340-012-0145(5)(c) because Respondent's conduct was negligent. By failing to keep required personnel training records, Respondent failed to take reasonable care to avoid a foreseeable risk that it would violate UST requirements.

"C" is Respondent's efforts to correct the violation and receives a value of 2 according to OAR 340-012-0145(6)(g) because Respondent did not address the violation as described in paragraphs (6)(a) through (6)(e) and the facts do not support a finding under paragraph



(6)(f). As of the date of this Notice, Respondent has not submitted training records for Class C operators at the Facility.

"EB" is the approximate dollar value of the benefit gained and the costs avoided or delayed as a result of the Respondent's noncompliance. It is designed to "level the playing field" by taking away any economic advantage the entity gained and to deter potential violators from deciding it is cheaper to violate and pay the penalty than to pay the costs of compliance. In this case, "EB" receives a value of \$0 because DEQ finds that the economic benefit Respondent gained by failing to maintain training records was de minimis.

PENALTY CALCULATION:  $\text{Penalty} = \text{BP} + [(0.1 \times \text{BP}) \times (\text{P} + \text{H} + \text{O} + \text{M} + \text{C})] + \text{EB}$

$$\begin{aligned} &= \$250 + [(0.1 \times \$250) \times (5 + 0 + 4 + 4 + 2)] + \$0 \\ &= \$250 + (\$25 \times 15) + \$0 \\ &= \$250 + \$375 + \$0 \\ &= \$625 \end{aligned}$$